

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
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: .
v. : **MEMORANDUM & ORDER**
: 17-CR-558 (WFK)
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: .
ELJAHSON GARCIA, :
: .
: .
Defendant. :
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WILLIAM F. KUNTZ, II, United States District Judge: On July 31, 2019, the Court sentenced Defendant Eljahson Garcia to twenty-one (21) months of imprisonment and three (3) years of supervised release for cocaine base distribution, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). Defendant commenced his term of supervision on June 7, 2021. On November 19, 2021, the Probation Department (“Probation”) filed a violation of supervised release (“VOSR”) report charging Defendant with violating the conditions of his supervision by: (1) testing positive for marijuana; (2) failing to attend his intake appointment for substance abuse treatment; (3) traveling to the Western District of Pennsylvania without permission; and (4) relocating to an unapproved address without notifying Probation. For the foregoing reasons, the Court finds that Defendant violated the conditions of his release and orders him remanded into custody.

BACKGROUND

The conditions of Defendant’s supervision require him to, among other things: (1) participate in an outpatient drug treatment program; (2) refrain from any unlawful use of a controlled substance; (3) not leave the judicial district except with the permission of the Court or probation officer; and (4) reside at a place approved by the probation officer and, if relocating to a different address, notify the probation officer at least ten (10) days before the change. ECF No. 46; *see* ECF No. 50.

Defendant’s initial mandatory urine specimen collected on June 14, 2021 tested positive for marijuana. ECF No. 46. He was referred for outpatient substance abuse treatment and was scheduled for an intake appointment at the Hispanic American Organization on September 15, 2021, but failed to attend. *Id.* Moreover, on or about August 30, 2021, Defendant revealed he

was residing with his girlfriend in Wilkes-Barre, Pennsylvania, despite not having been given permission to travel to or reside in the Middle District of Pennsylvania. *Id.* He also received a speeding ticket from the Wilkes-Barre Police Department on October 15, 2021. *Id.* Defendant never notified Probation of his change of address and, as of November 19, 2021, failed to report the location of his legal residence and his current whereabouts. *Id.*

On June 1, 2022, the Court held a status conference regarding Defendant's instant violations. Defendant failed to appear.

DISCUSSION

I. Legal Standard

A defendant released pending trial pursuant to 18 U.S.C. § 3142 "who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court." 18 U.S.C. § 3148(a). After a hearing, a judicial officer "shall enter an order of revocation and detention if . . . the judicial officer – (1) finds that there is . . . clear and convincing evidence that the person has violated any other condition of release; and (2) finds that – (A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or (B) the person is unlikely to abide by any condition or combination of conditions of release." 18 U.S.C. § 3148(b).

The Court may revoke Defendant's bond upon a finding that there is "clear and convincing evidence that [he] has violated any [] condition of release" and, based on the factors set forth in 18 U.S.C. § 3142(g), "there is no condition or combination of conditions of release that will assure that [he] will not flee or pose a danger to the safety of any other person or the community; or [he] is unlikely to abide by any condition or combination of conditions of

release.” *United States of America v. Russo*, No. 20-CR-023 (DLI), 2021 WL 1176169, at *2 (E.D.N.Y. Mar. 29, 2021) (Irizarry, J.) (citing 18 U.S.C. § 3148(b)(1-2)). “The clear and convincing evidence standard is somewhere between the preponderance of the evidence standard and the proof beyond a reasonable doubt standard.” *Bastien v. William*, No. 03 Civ. 5749, 2004 WL 2978283, at *4 (S.D.N.Y. Dec. 20, 2004) (Cote, J.) (citing *Addington v. Texas*, 441 U.S. 418, 431 (1979)). There must be “a high degree of certainty” that Defendant violated the conditions of his release. *United States v. Chimurenga*, 760 F.2d 400, 405 (2d Cir. 1985).

II. Application

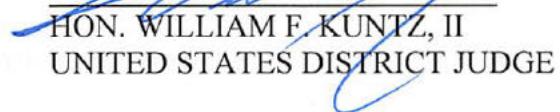
There is clear and convincing evidence Defendant violated the conditions of his supervision. Within four months of his release from custody, Defendant tested positive for marijuana, an illicit substance, and disclosed he was living in Wilkes-Barre, Pennsylvania, even though he never received authorization from Probation to travel to the Middle District of Pennsylvania. Defendant’s failure to report his whereabouts to Probation and his October 15, 2021 speeding ticket from the Wilkes-Barre Police Department further corroborate his unauthorized leave from the Eastern District of Pennsylvania. In light of these repeated violations, the Court also finds the Defendant is a flight risk and is “unlikely to abide by any condition or combination of conditions of release.” 18 U.S.C. § 3148(b).

CONCLUSION

For the foregoing reasons, the Court revokes Defendant’s bond, and orders the issuance of a warrant and for Defendant to be remanded into custody.

SO ORDERED.


s/WFK


HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: June 1, 2022
Brooklyn, New York